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WASHINGTON, D.C. 20503  
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In re Application of	:	DECISION ON
FORSSMANN et al.	:	
Application No.: 09/509,559	:	PETITION UNDER
PCT No.: PCT/EP98/06547	:	
Int. Filing Date: 15 October 1998	:	37 CFR 1.47(a)
Priority Date: 15 October 1997	:	
Attorney Docket No.: P65315US0	:	
For: CAHEDRIN DERIVED GROWTH	:	
FACTOR AND ITS USE	:	

This is a decision on applicants' "PETITION UNDER 37 CFR § 1.47(a)" filed in the United States Patent and Trademark Office (USPTO) on 27 November 2000.

### **BACKGROUND**

On 15 October 1998, applicants filed international application PCT/EP98/06547, which claimed a priority date of 15 October 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 22 April 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 07 May 1999, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 April 2000 (15 April 2000 being a Saturday).

On 14 April 2000, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge for providing the oath or declaration later than thirty months from the priority date.

On 26 May 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a one-month extendable period for reply.

On 14 June 2000, applicants submitted a "SMALL ENTITY DECLARATION" and a request for refund of the excess fee paid on 14 April 2000.

On 27 November 2000, applicants submitted the instant petition under 37 CFR 1.47(a), which was accompanied by, *inter alia*: an assertion of small entity status; a petition for a five-month extension of time; the fee for a five-month extension of time for a small entity; a declaration executed by all but one of the joint inventors; a declaration of facts by William E. Player.

### DISCUSSION

#### Request for Refund

The request for refund based on establishment as a small entity of the excess amount of the fee paid on 14 April 2000 was timely filed. Note that amended 37 CFR 1.28 (65 FR 54604, Sept. 8, 2000, effective, Sept. 8, 2000) only requires an assertion of small entity status rather than the previously required statements. Accordingly, applicants' request for refund is granted. Deposit Account No. 06-1358 will be credited \$485.00.

#### Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to (1), the petition fee of \$130.00 under 37 CFR 1.17(h) has been charged to Deposit Account 06-1358, as authorized in the Transmittal Letter filed 27 November 2000.

As to (2), sufficient factual proof has been provided that the non-signing joint inventor, Hossein Mostafavi, cannot be reached after diligent effort.

As to (3), the last known address of the non-signing inventor Hossein Mostafavi has been provided.

As to (4), a declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor has been provided. The declaration submitted 27 November 2000 complies with 37 CFR 1.497(a)-(b).

### CONCLUSION

For the reasons set forth above, the request for refund filed 14 June 2000 is GRANTED.


For the reasons set forth above, applicants' petition under 37 CFR 1.47(a) is GRANTED.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Affairs.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including the accordation of a 35 U.S.C. 371(c) date of **27 November 2000**.

  
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